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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/453,726	12/02/1999	DAVID M READ	52951-USA-7A	2987

7590 09/25/2002

JEFFREY J HOHENSHELL  
OFFICE OF INTELLECTUAL PROPERTY COUNSEL  
3M INNOVATIVE PROPERTIES COMPANY  
P O BOX 33427  
ST PAUL, MN 551333427

EXAMINER

CHORBAJI, MONZER R

ART UNIT PAPER NUMBER

1744

DATE MAILED: 09/25/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/453,726

Applicant(s)

READ, DAVID M

Examiner

MONZER R CHORBAJI

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This non-final office action is in response to the amendment received on 06/28/2002

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-3, 5-6, 9-13, 15-16, 19-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Ignacio et al (U.S.P.N. 6,287,518).

With respect to claims 1, 10-11, Ignacio discloses a hydrogen peroxide sterilization indicator (col.5, lines 53-55) composition including a binder (col.3, lines 40-41) disposed on a substrate (col.4, lines 14-15) such that the composition includes malachite green oxalate (col.6, lines 38-39). In addition, Ignacio teaches colorants that do not change color upon contact with hydrogen peroxide vapor can be used as well (col.3, lines 54-56). Furthermore, Ignacio discloses a method of monitoring a hydrogen

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peroxide sterilization process (col.2, lines 60-61 and col.5, lines 53-55) that exposes an article and the indicator to hydrogen peroxide vapor (col.9, lines 53-62).

The limitations of claims 2-3, 12-13, and 21, have been addressed above with regard to claims 1 and 10.

The limitations of claims 6 and 16 have been addressed above with regard to claim 10.

With respect to claims 5 and 15, Ignacio's composition includes thionine (col.6, line 37). Note that thionine and thionin are synonyms.

With respect to claims 9, 19, and 20, Ignacio's indicator includes a polyester film substrate (col.3, line 65) and a shellac binder (col.3, line 41).

With respect to claim 22, Ignacio's method includes exposing the article and the indicator to hydrogen peroxide vapor (col.2, lines 60-61, col.5, lines 53-55 and col.9, lines 53-62) such that the vapor must inherently be applied under certain temperature and pressure ranges in order to achieve sterilization.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ignacio et al (U.S.P.N. 6,287,518) in view of Malchesky et al (U.S.P.N. 5,518,927).

The teachings of Ignacio have previously been set forth with respect to claims 1-3, 5-6, 9-13, 15-16, 19-22. With respect to claims 4 and 14, Ignacio fails to disclose such colorants. Malchesky's sterilization indicator changes colors during such processes (col.2, lines 4-7 and col.3, lines 24-26) teach the use of safranine (col.3, line 56). Note that safranine is a synonym to methylene violet. Furthermore, Malchesky's indicator is used in vapor sterilization cycles (col.3, lines 30-32). Even though Malchesky's indicator is used for peracetic acid cycles, Malchesky teaches that the indicator can be used for any type of vaporous sterilant (col.3, lines 30-32). Since vaporous hydrogen peroxide is a well-known sterilant, then Malchesky's indicator can be used with such a sterilant. It would have been obvious to one having ordinary skill in the art to modify the composition of Ignacio to include safranine, which can be used with various types of sterilants (Malchesky, col.3, lines 30-32).

7. Claims 7 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ignacio et al (U.S.P.N. 6,287,518) in view of Bealing et al (U.S.P.N. 5,990,199).

The teachings of Ignacio have previously been set forth with respect to claims 1-3, 5-6, 9-13, 15-16, 19-22. With respect to claims 7 and 17, Ignacio fails to explicitly disclose specific examples of colorants that do not change color upon contact with

hydrogen peroxide vapor. Bealing's vapor phase hydrogen peroxide indicator (col.4, lines 15-18) includes Janus green B dye (col.6, line 26). It would have been obvious to one having ordinary skill in the art to modify the composition of Ignacio to include Janus green B dye to determine the effectiveness of sterilization processes for vapor phase hydrogen peroxide (Bealing, col.4, lines 7-9).

8. Claims 8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ignacio et al (U.S.P.N. 6,287,518) in view of Bealing et al (U.S.P.N. 5,990,199) and further in view of Barrett (U.S.P.N. 5,955,025).

The teachings of Ignacio have previously been set forth with respect to claims 1-3, 5-6, 9-13, 15-16, 19-22. With respect to claims 8 and 18, Ignacio fails to explicitly disclose such limitations. With regard to claims 8 and 18, Bealing discloses various classes of colorant acid blue can be used (col.6, lines 36-38). For example, Bealing uses Acid blue #7 or Acid blue #20. Alkali blue 6B is also known as Acid blue #119. Since Bealing provides only examples (col.6, lines 32-38) of using various classes of the colorant acid blue, choosing a different class of acid blue (i.e., Acid blue #119) is not non-obvious and is well within the scope of the artisan. Furthermore, as explained above Bealing discloses the use of Janus green B, however, fails to specifically disclose the use of Quinacridone red 19. Barrett discloses the use of Quinacridone red (col.4, table). Barrett does not disclose the use to Quinacridone red 19. However, the significance of "19" is not understood by the examiner. It would have been obvious to one having ordinary skill in the art to modify the composition of Ignacio to include any of the available and known class or classes of acid blue dyes including acid blue #119 and

Quinacridone red to indicate when a particular article has been subjected specifically to vaporous hydrogen peroxide for sterilization (Barrett, col.2, lines 58-61).

### ***Response to Arguments***

9. The Ignacio reference was used to show that in the art of vapor phase hydrogen peroxide sterilization processes the use of malachite green oxalate colorant is well known. The Malchesky reference was used to show that in the art of vapor phase hydrogen peroxide sterilization processes the use of safranine (methylene violet) is well known. The Bealing reference was used to show that in the art of vapor phase hydrogen peroxide sterilization processes the use of Janus green B and the use of various types of classes of acid blue dyes are both well known. The Barrett reference was used to show that in the art of vapor phase hydrogen peroxide sterilization processes the use of Quinacridone red is also well known. However, the significance of "19" is not clear to the examiner and clarification of Quinacridone red 19 is needed.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R CHORBAJI whose telephone number is (703) 305-3605. The examiner can normally be reached on M-F 8:30-5:00.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT J WARDEN can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3599 for regular communications and (703) 305-7719 for After Final communications.

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12. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Monzer R. Chorbaji *MRC*  
Patent Examiner  
AU 1744  
September 20, 2002

*Robert J. Warden, Sr.*  
ROBERT J. WARDEN, SR.  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700